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SERVICE DATE - LATE RELEASE APRIL 27, 2001

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Finance Docket No. 34035

THE CENTRAL ILLINOIS RAILROAD COMPANY  
– ACQUISITION AND OPERATION EXEMPTION –  
RAIL LINES OF UNION PACIFIC RAILROAD COMPANY AND CANADIAN PACIFIC  
RAIL SYSTEM AT ELK GROVE VILLAGE, COOK AND DUPAGE COUNTIES, IL

Decided: April 27, 2001

The petition to stay the effectiveness of the exemption in this proceeding is being denied.

### BACKGROUND

By notice filed on April 23, 2001, the Central Illinois Railroad Company (CIRY) invokes the class exemption of 49 CFR 1150.41, et seq., for its acquisition by lease and operation of what it terms “rail lines” owned by the Union Pacific Railroad Company (UP) and the Canadian Pacific Rail System (CP). CIRY describes the track in greater detail as follows: the Centex Industrial Park Trackage owned by UP, or jointly by UP and CP, beginning at the West edge of York Road, which is the west end of UP’s approximate 800-foot Elk Grove lead track that extends from UP’s Milwaukee Subdivision at Milepost No. 7.8, consisting of approximately 25 miles of tracks.

By petition filed on April 25, 2001, Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), requests that the Board stay operation of the exemption pending the filing and disposition of a petition to reject or to revoke it. CIRY has replied in opposition to UTU-IL’s petition for stay.

### DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits of a request for rejection or revocation; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay would be in the public interest. Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958). The party seeking stay carries the burden of persuasion on all of the elements required for stay. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

The petition for stay will be denied. UTU-IL has not shown that its members would be irreparably harmed without a stay if the exemption were to be disallowed or revoked. UTU-IL asserts that six senior train service employees would be displaced if CIRY were to proceed with the transaction and that this would cause a “ripple effect,” presumable via a seniority-based chain of bumpings or displacements in the roster of the Chicago Freight Terminal. UTU-IL argues that the harm would be irreparable because (1) damages could not be ascertained with accuracy and (2) UTU-IL knows of no contractual provisions by which damage claims could be based on interim labor changes that are implemented before an unauthorized exemption is declared void or revoked. CIRY disputes the claim of irreparable harm, citing availability of claims for lost wages or other compensation if the exemption were to be revoked.

There is no basis in this record to conclude that any harm to employees resulting from this transaction would be irreparable. Nor is it clear why economic or other remedies could not be imposed if warranted.

Moreover, on this limited record, UTU-IL has not clearly demonstrated that it is likely to succeed on the merits of its challenge to CIRY’s invocation of the class exemption. Both UTU-IL and CIRY have addressed the question of whether the trackage at issue in this proceeding is “excepted” track under 49 U.S.C. 10906. That issue can be addressed and considered more fully if and when a petition for rejection or revocation is filed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. UTU-IL’s petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary